

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
JOANNE HOEPER, State Bar #114961  
Chief Trial Deputy  
ANDREW GSCHWIND, State Bar #231700  
Deputy City Attorney  
Fox Plaza  
1390 Market Street, 6<sup>th</sup> Floor  
San Francisco, California 94102-5408  
Telephone: (415) 554-3800  
Facsimile: (415) 554-3837

Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH VICTOR LAGANA,

Plaintiff,

vs.

SAN FRANCISCO POLICE  
DEPARTMENT,

Defendant.

Case No. C 08-03392 CW

**[PROPOSED] ORDER GRANTING  
DEFENDANT CITY'S MOTION TO  
DISMISS FOR FAILURE TO STATE A  
CLAIM, OR, IN THE ALTERNATIVE,  
FOR A MORE DEFINITE  
STATEMENT**

Judge: Hon. Claudia Wilken  
Hearing Date: Aug. 28, 2008  
Time: 2:00 P.M.  
Place: Crtrm. 2, 4th Floor  
1301 Clay St., Oakland, CA 94612

Date Action Filed: May 29, 2008  
Trial Date: Not set

On July 21 2008, defendant City and County of San Francisco, by and through its counsel, Deputy City Attorney Andrew M. Gschwind, filed a motion to dismiss the complaint for failure to state a claim, or, in the alternative, for a more definite statement. [Plaintiff Joseph Victor Lagan filed

1 a brief in opposition to defendant's motion, and defendant filed a reply brief.] [Strike out if no  
2 opposition and/or reply papers were filed.]

3 [This matter came on for a hearing on August 28, 2008. Defendant was represented by DCA  
4 Gschwind, and plaintiff represented himself.] [Strike out if no hearing was held.]

5 HAVING READ the parties' briefs [and considered the arguments of both parties at hearing,]

6 [THE COURT HEREBY GRANTS defendant's motion to dismiss the complaint. The Court  
7 finds that plaintiff's complaint fails to state a claim under federal law because it contains only a  
8 conclusory allegation that plaintiff's First Amendment rights were violated without alleging any  
9 factual basis whatsoever for this claim. The Court further finds that plaintiff's complaint fails to state  
10 any claims under California law for the same reason. Furthermore, because plaintiff does not attach  
11 any causes of action to his complaint as required, his claims fail for this reason as well. Finally,  
12 plaintiff has not alleged compliance with the California claims presentation statutes contained in the  
13 California Government Code, as required.

14 ACCORDINGLY, THE COURT hereby dismisses this action without prejudice.] [Strike out  
15 if motion for a more definite statement is granted in the alternative.]

16  
17 [OR, IN THE ALTERNATIVE:

18 THE COURT HEREBY GRANTS defendant's motion, in the alternative, for a more definite  
19 statement pursuant to Federal Rule of Civil Procedure 12(e). Specifically, the Court finds that  
20 plaintiff's sole allegation that, "First Amendment violation and assault, frequent threats and stalking  
21 toward plaintiff," is so vague and ambiguous that the City cannot reasonably be required to frame a  
22 responsive pleading to it.

23 ACCORDINGLY, PLAINTIFF IS REQUIRED TO FURNISH, WITHIN 10 DAYS OF  
24 SERVICE OF THIS ORDER, a more definite statement of his legal claims and the factual allegations  
25 that support such claims. In this statement, plaintiff must set forth how and when his First  
26 Amendment rights were violated and by whom. He should also set forth how and when and by whom

1 he was allegedly assaulted, threatened and/or stalked.] [Strike out if motion to dismiss is granted.]  
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4 IT IS SO ORDERED.  
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7 Dated: \_\_\_\_\_

\_\_\_\_\_  
8 HON. CLAUDIA WILKEN  
9 UNITED STATES DISTRICT JUDGE  
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**PROOF OF SERVICE**

I, SHADE ADESANWO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On July 21, 2008, I served the following document(s):

[PROPOSED] ORDER GRANTING DEFENDANT CITY'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

on the following persons at the locations specified:

Joseph Victor Lagana  
5238 Cartwright Avenue, #8  
No. Hollywood, CA 91601

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. **A declaration from the messenger who made the delivery** ☐ **is attached** or ☐ **will be filed separately with the court.**

☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number Fax #' to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of the transmission report** ☐ **is attached** or ☐ **will be filed separately with the court.**

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed July 21, 2008, at San Francisco, California.

/s/ Shade Adesanwo

SHADE ADESANWO